IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4696 OF 2003

M/s.Alfa Laval Limited .... Petitioner.
V/s
Arjun Natha Kamble & Ors..... ....
Respondents.

Mr.K.S.Bapat, Adv. For the petitioner

Mr.S.R.Nargolkar, AGP for Respondent Nos. 2 and 3.

Mr.N.A.Kulkarni, for respondent No.1.

CORAM: V.G. PALSHIKAR,

Ag.C.J.

AND

SMT.NISHITA MHATRE,

J.

13.02.2006.

PC:

By this petition the petitioner-employer-company has questioned the order passed by the respondent-State in referring a dispute for adjudication to proper Labour/Industrial Court. The main contention is that the reference was sought for after several years, 18 to be precise and therefore being very stale claim ought not to have been entertained by the State.

2. The position in law regarding limited powers of the State to make reference is well settled. The appropriate government cannot while making or declining to make reference adjudicate on the issue raised by the claim for making reference. However, heavy reliance was placed by the learned

counsel for the petitioner on few judgments of the Supreme Court for holding that reference could not in such circumstances be made. Reliance was placed on a judgment of the Supreme Court reported in the case of ***Nedungadi Bank Ltd.*** V/s ***K.P.Madhavankutty & Ors.***, 200 I CLR 671 where the Supreme Court has observed that in a given case the appropriate Government can in exercise of powers under section 10 of the Industrial Disputes Act, decline to make reference where making of it is delayed by several years. However in the same judgment in para 6 the Supreme Court has observed that law does not prescribe any time limit for the appropriate government to exercise its powers under section 10 of the act and the Supreme Court goes on to observe as to when a dispute can be said to be stale depending on the facts and circumstances of each case.

3. Reliance was then placed on the judgment of the Supreme Court reported in the case of ***U.P.Electricity Board*** V/s ***Rajesh Kumar,*** (2003) 12 SCC 548 where again the position that no period of limitation is prescribed for making reference is reiterated and the Supreme Court has laid down that if the employer does not question the making of reference on the ground of delay the question of delay cannot be adjudicated by him for the first time in High Court after adjudication by Labour Court. In the present case objection is taken at the first instance. It cannot be disputed that the appropriate Court while considering the reference can take into consideration the aspect of delay and mould the relief if any to be granted accordingly. Then reliance was placed on a judgment of the Supreme Court reported in the case of ***Haryana State Coop. Land Development Bank*** V/s ***Neelam,*** (2005) 5

SCC 91 wherein the Supreme Court has observed in para 12 that the Industrial Courts like any other court must be held to have some discretion in the matter of grant of relief. Then in para 13 it has observed that it cannot be said that irrespective of facts and circumstances of each case a stale claim must be entertained by the appropriate government while making a reference or in such cases where such reference is made the workman would be entitled to the relief at the hands of the Labour Court. These observations of the Supreme Court take into consideration the fact of limited powers of the State under section 10 of the act and existence of discretionary power in the Labour and Industrial Court while granting relief. It cannot therefore be said that as a matter of course any stale claim is liable to be rejected.

4. In our opinion, therefore, it is the Industrial Court which has the discretion as observed by the Supreme Court in para 12 of ***Haryana Coop.Land Development Bank's case*** (supra). There is no reason to interfere at this stage since the matter regarding delay and its effect can be gone into and decided upon by the appropriate Court. Hence petition stands dismissed.